

16 October 1978

STAT MEMORANDUM FOR: [REDACTED]  
STAT FROM : [REDACTED]  
Office of General Counsel  
SUBJECT : Authorities of the CIA

1. Congress has historically recognized that the CIA is a unique executive agency with a special mission and special requirements. To effectively protect the security of CIA information, operations, and personnel, and to allow CIA the logistical flexibility to quickly and decisively respond to political developments in an ever-changing world, CIA was given extraordinary statutory authorities with which to perform its mission and functions. However, certain CIA authorities have always remained unclear and Title IV of the forthcoming Charter legislation represents an opportunity to clarify these authorities.

2. Title IV as presently conceived attempts to comprehensively deal with the enhancement of CIA security and logistical flexibility. The proposed section 421(a)(6) would allow CIA to inter alia, rent, acquire, construct, and maintain buildings without regard to the Public Buildings Act of 1959. The proposed section 421(h) would allow CIA to assume protective jurisdiction over the grounds and installations of CIA and the Office of the Director. The proposed section 421(i) would expand the authority of Agency employees to carry firearms for security purposes, and the proposed section 422 would broaden the authority of CIA to procure and dispose of property, supplies, services, equipment, and facilities. These proposed sections reflect the fact that current CIA authorities pertaining to security and logistical flexibility need to be strengthened and perfected.

3. It would clearly defeat the purpose of such a statutory scheme if CIA were unable to assume exclusive jurisdiction, custody, and control over the facilities and properties of CIA. CIA would be able to acquire, maintain, protect, and dispose of its facilities and yet it would be unable to control the use and operation of such facilities unless it possessed the underlying jurisdiction to do so.

OGC Has Reviewed

In effect, matters pertaining to Agency security and logistical flexibility would be subject to controls imposed by an external entity. Thus, it is recommended that the Director of the Agency be given exclusive jurisdiction, custody, and control over the facilities and properties of CIA.

4. Moreover, it is not unusual for entities with special purpose facilities to retain their own jurisdiction over their facilities. Entities such as the Veterans Administration, the Bureau of the Mint, the National Park Service, the Nuclear Regulatory Commission, and the Tennessee Valley Authority have jurisdiction over their facilities. So as not to render the usefulness of the authorities noted in paragraph 2 a nullity, it is recommended that a new section 421(1) be added to section 421 which would read as follows:

"(1) All facilities and properties owned or utilized by the Agency shall be under the exclusive jurisdiction and control, and in the custody of, the Director of the Agency."

The terms "facilities" and "properties" are used instead of the terms "installations" and "grounds" because it is unclear whether the terms "installations" and "grounds" would have sufficient scope. It is recommended that the terms "facilities" and "properties" be substituted for the terms "installations" and "grounds" in section 421(h).

5. Title IV would also give the Agency a general firearms authority at section 421(i). However, the circumstances outlined by the language of this section would not be broad enough to adequately meet the needs of the Agency. This section begins by limiting the authorization to carry firearms so that it covers only Agency employees within the United States. The term "employee" is not defined within this title. If the 5U.S.C. 2105 definition of employee is controlling, other categories of Agency personnel would not come within the scope of the firearms authorization. Moreover, the Agency would remain without an express authorization to utilize firearms outside of the United States for any reason whatsoever.

6. The section then goes on to authorize employees within the United States to carry firearms for "courier protection purposes." This phraseology is terribly vague. It is not clear whether the authorization would only run to official couriers or to anyone carrying official Agency materials in their possession. Furthermore, would the authorization allow the utilization of firearms to protect official Agency materials or only to protect the life of the "courier," if endangered?

7. The section also authorizes employees within the United States to carry firearms to protect "the Director of National Intelligence, the Deputy Director of National Intelligence, and, in exigent circumstances, such officials of the Agency as the Director may designate." The protective capability of the Agency would be limited in its application to the protection of Agency "officials" only. Yet Agency personnel other than "officials" may need the protection of the Agency.

8. In light of the foregoing, it is recommended that alternate language drafted by this Agency be substituted for section 421(i). The Agency's language would authorize Agency personnel to carry firearms while in the discharge of their official duties both inside and outside of the United States. However, while inside the United States, the authority for Agency personnel to carry firearms would be limited to fulfilling only the legitimate needs of the Agency.

9. Agency personnel inside the United States would be authorized by the Agency's language to carry firearms to protect information concerning intelligence sources and methods, and classified intelligence documents and material. The only intelligence information, documents or material that could ever be protected under the present section 421(i) would be intelligence information, documents or material in transit. Similarly, while Agency personnel inside the United States would be authorized by the Agency language to carry firearms to protect monies and other valuable assets owned or utilized by the Agency, under the present section 421(i), any protection given to such items could only be given while they were in transit.

10. Though it could be argued that section 421(h) provides protection for intelligence information, documents and material, and monies and other valuable assets owned or utilized by the Agency, when they are not in transit, I would maintain that section 421(h) is not enough. First, the section 421(h) authority is limited to the protection of designated installations and grounds. If the intelligence information, documents and material, and mediums of exchange need Agency protection at premises or locations other than the designated installations or grounds, the section 421(h) authority would not apply. Secondly, section 421(h) does not specifically authorize the use of firearms for the protection of the designated installations and grounds. While section 421(h) implies such authority, the language of the Agency would make such an authorization explicit.

11. The present section 421(i) completely ignores the transportation and utilization of firearms for authorized training.

The Agency language would permit such transport and training. Finally, as to the protection of defectors and foreign persons visiting the United States under Agency auspices, this part of section 421(i) matches Agency language precisely.

12. In order to resolve the above-mentioned concerns, it is suggested that section 421(i) be amended to read as follows:

"(i) Under such regulations as the Director of the Agency shall prescribe, Agency personnel may carry and use firearms while in the discharge of their official duties: Provided, That within the United States, such official duties shall include only the protection of (i) information concerning intelligence sources and methods and classified intelligence documents and material; (ii) facilities, properties, monies and other valuable assets owned or utilized by the Agency or the Office of the Director of National Intelligence; (iii) the Director of National Intelligence, the Deputy Director of National Intelligence, any Assistant Director of National Intelligence, and other personnel of the Agency or the Office of the Director of National Intelligence as may be designated by the Director of the Agency; and (iv) defectors and foreign persons visiting the United States under Agency auspices; and Provided further, That such duties shall include the transportation and utilization of firearms for authorized training."

13. Finally, it should be noted that Title IV would give the Director of the Agency the authority to promulgate rules and regulations for the protection of Agency facilities and properties. In order to put teeth in any rules or regulations which may be promulgated, it is recommended that criminal penalties be attached to the violation of such rules and regulations. While Congress has largely centralized in the Administrator of General Services the authority to annex criminal penalties to violations of rules and regulations promulgated to protect federal facilities, there are certain exceptions to this policy. These exceptions are entities with special purpose facilities.

14. The Nuclear Regulatory Commission at 42 USC 2278a is authorized to issue regulations relating to the protection of its facilities, with the willful violation of such regulations punishable by a substantial fine and/or a substantial term of imprisonment. The Administrator of the Veterans Administration at 38 USC 218 is authorized to make all needful rules and

regulations for the governing of its facilities, and to annex to such rules and regulations criminal penalties consisting of a modest fine and/or a modest term of imprisonment. And 18 USC 799 provides criminal penalties for the willful violation of National Aeronautics and Space Administration regulations promulgated by the Administrator for the protection or security of NASA facilities and properties, as well as the facilities and properties of NASA contractors; the penalties to consist of substantial fines and/or substantial terms of imprisonment.

15. By providing for the above-mentioned entities to promulgate rules and regulations which are punishable by criminal penalties, Congress has recognized that special purpose facilities require special protection. Furthermore, the violation of a particular rule or regulation may not necessarily constitute the violation of a federal or state statute. Accordingly, it would severely undermine the ability of CIA security officers to meaningfully enforce such rules and regulations if specific criminal penalties are not attached to specific rules and regulations.

16. However, to remove any fears which might result from giving the Director of the Agency the authority to annex, at his discretion, criminal penalties to any protective rules or regulations he may promulgate, it is instead recommended that specific statutory language establish specific fines and terms of imprisonment for the violation of such rules and regulations. This would be fully consistent with the approach followed in 42 USC 2278a and 18 USC 799. Using this approach section 421(h) would be redesignated as section 421(h)(1), with a new subsection (h)(2) added to section 421 that would read as follows:

"(h)(2) Whoever shall willfully violate or attempt to violate any rule or regulation promulgated pursuant to subsection (h)(1) of this section shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

The criminal penalties in the proposed amendatory language are identical to the actual criminal penalties found in 42 USC 2278a and 18 USC 799 (both attached

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Attachments

## Historical Note

Legislative History. For legislative see 1954 U.S.Code Cong. and Adm.News, history and purpose of Act Aug. 30, 1954, p. 3456.

## Library References

United States 53(13).

C.J.S. United States § 69.

## West's Federal Forms

Dismissal of indictment, see §§ 7301 to 7308.

### § 2278a. Trespass upon Commission installations; issuance and posting of regulations; penalties for violation

(a) The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, or in the custody of the Commission. Every such regulation of the Commission shall be posted conspicuously at the location involved.

(b) Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection (a) of this section shall, upon conviction thereof, be punishable by a fine of not more than \$1,000.

(c) Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection (a) of this section with respect to any installation or other property which is enclosed by a fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both.

Aug. 1, 1946, c. 724, § 229, as added Aug. 6, 1956, c. 1015, § 6, 70 Stat. 1070.

## Historical Note

Legislative History. For legislative see 1956 U.S.Code Cong. and Adm.News, history and purpose of Act Aug. 6, 1956, p. 4426.

## Library References

United States 53(6).

C.J.S. United States § 65 et seq.

## West's Federal Forms

Indictment and information, see § 7101 et seq.  
Sentence and fine, see § 7531 et seq.

T. 42 U.S.C.A. §§ 2011-3100-12

and acts which would give rise to legal consequences and penalties under section 794 when performed during a state of war shall rise to the same legal consequences and penalties when they are performed during the period above provided for.

Added June 30, 1953, c. 175, § 4, 67 Stat. 133.

So enacted. See first section 79S enacted on Oct. 31, 1951, set out above.

#### Historical Note

References in Text. Section 1(a) (29) of the Emergency Powers Continuation Act (67 Stat. 333) as further amended by Public Law 12, Eighty-third Congress, referred to in text, was formerly set out as a note under section 791 of this title and was repealed by Act June 30, 1953, c. 175, § 7, 67 Stat. 134.

Proc. 2912, 3 C.F.R., 1950 Supp., p. 71, referred to in text, is an erroneous citation. It should refer to Proc. 2914 which

is set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

Canal Zone. Applicability of section to Canal Zone, see section 14 of this title.

Legislative History. For legislative history and purpose of Act June 30, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 1779.

### § 799. Violation of regulations of National Aeronautics and Space Administration

Whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or any property or equipment in the custody of the Administration, or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

Added Pub.L. 85-568, Title III, § 304(c)(1), July 29, 1958, 72 Stat. 434.

#### Historical Note

Codification. Section was added by subsec. (c) of section 304 of Pub.L. 85-568. Subsecs. (a) and (b) of section 304 are classified to section 2453 of Title 42, The Public Health and Welfare. Subsec. (d) of section 304 is classified to section 1114 of this title. Subsec. (e) of section 304 is classified to section 2456 of Title 42.

Canal Zone. Applicability of section to Canal Zone, see section 14 of this title.

Legislative History. For legislative history and purpose of Pub.L. 85-568, see 1958 U.S. Code Cong. and Adm. News, p. 3160.

#### Library References

Conspiracy § 25.

War and National Defense § 48.

C.J.S. Conspiracy § 42.

C.J.S. War and National Defense § 58.

#### Code of Federal Regulations

Extraterrestrial exposure, safety precautions, violations, see 14 CFR 1211.100 et seq.  
 NASA security areas, designation, etc., 14 CFR 1203a.100 et seq.